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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GENEXA, INC.,  
Plaintiff,  
v.  
KINDERFARMS, LLC.,  
Defendant.

Case No. 2:23-cv-08378-MCS (SKx)

**PROTECTIVE ORDER**

Judge: Hon. Mark C. Scarsi  
Trial Date: Not Yet Set

KINDERFARMS, LLC.,  
Counterclaim Plaintiff,  
v.  
GENEXA, INC.,  
Counterclaim Defendant.

1 It is hereby stipulated by the parties that the Court enter the following Order  
2 protecting confidentiality of both party and non-party information to be disclosed in  
3 these litigations.

4 **1. A. PURPOSES AND LIMITATIONS**

5 Discovery in this action is likely to involve production of confidential,  
6 proprietary, and/or private information for which special protection from public  
7 disclosure and from use for any purpose other than prosecuting this litigation may  
8 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
9 enter the following Stipulated Protective Order. The parties acknowledge that this  
10 Order does not confer blanket protections on all disclosures or responses to  
11 discovery and that the protection it affords from public disclosure and use extends  
12 only to the limited information or items that are entitled to confidential treatment  
13 under the applicable legal principles. The parties further acknowledge, as set forth  
14 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective  
15 Order does not entitle them to file confidential information under seal; Civil Local  
16 Rule 79-5 sets forth the procedures that must be followed and the standards that  
17 will be applied when a party seeks permission from the court to file material under  
18 seal.

19 **B. GOOD CAUSE STATEMENT**

20 This action is between competitors that offer over-the-counter drug  
21 formulations and nutritional supplements. This action is likely to involve  
22 proprietary customer and pricing lists, and other valuable research, development,  
23 commercial, financial, technical, and/or proprietary information for which special  
24 protection from the other party, public disclosure and from use for any purpose  
25 other than prosecution of this action is warranted. Such highly confidential and  
26 proprietary materials and information consist of, among other things, highly  
27 confidential business or financial information, information regarding highly  
28 confidential business practices, including investor information, or other highly

1 confidential research, development, or commercial information (including  
 2 information implicating privacy rights of third parties), confidential information  
 3 otherwise generally unavailable to the other party or to the public, or which may be  
 4 privileged or otherwise protected from disclosure under state or federal statutes,  
 5 court rules, case decisions, or common law

6 Accordingly, to expedite the flow of information, to facilitate the prompt  
 7 resolution of disputes over confidentiality of discovery materials, to adequately  
 8 protect information the parties are entitled to keep confidential, to ensure that the  
 9 parties are permitted reasonable necessary uses of such material in preparation for  
 10 and in the conduct of trial, to address their handling at the end of the litigation, and  
 11 serve the ends of justice, a protective order for such information is justified in this  
 12 matter. It is the intent of the parties that information will not be designated as  
 13 confidential for tactical reasons and that nothing be so designated without a good-  
 14 faith belief that it has been maintained in a confidential, non-public manner, and  
 15 that there is good cause why it should not be part of the public record of this case.

## 16 **2. DEFINITIONS**

17 2.1 Action: The above-captioned action currently pending in the United  
 18 States District Court for the District of California.

19 2.2 Challenging Party: a Party or Non-Party that challenges the  
 20 designation of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information and items,  
 22 including tangible things, that are non-public, proprietary, commercially sensitive  
 23 information, and/or subject to third-party privacy or confidentiality restrictions and  
 24 that qualifies for protection under Federal Rule of Civil Procedure 26(c).

25 2.4 Counsel (without qualifier): Outside Counsel of Record and House  
 26 Counsel (as well as their respective support staffs).

27 2.5 Designating Party: a Party or Non-Party that designates information or  
 28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless  
4 of the medium or manner in which it is generated, stored, or maintained (including,  
5 among other things, testimony, transcripts, and tangible things), that are produced,  
6 disclosed or generated in disclosures, responses to discovery, or depositions in this  
7 matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter  
9 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
10 serve as an expert witness or as a consultant in this action, (2) is not a past or  
11 current employee of a Party, and (3) at the time of retention, is not anticipated to  
12 become an employee of a Party.

13 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
14 Information or Items: information or items that qualify as “CONFIDENTIAL” and  
15 are extremely sensitive, the disclosure of which to another Party or Non-Party, even  
16 under the restricted terms and conditions applicable to information or items  
17 designated as “CONFIDENTIAL,” would create substantial risk of injury to a  
18 Designating Party, Producing Party, or Non-Party’s reputation, financial interests,  
19 and/or property, or a substantial risk of serious injury that could not be avoided by  
20 less restrictive means. Examples of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
21 EYES ONLY” material include, but are not limited to, the following:

- 22 A. Confidential licenses and licensing terms;
- 23 B. Confidential sales, pricing, profit, and other financial information,  
24 including information regarding investors;
- 25 C. Confidential business, marketing, and strategic plans and forecasts;
- 26 D. Confidential technical information, including design, engineering,  
27 and development documents;

1 E. Employee personal information, to the extent such information is  
2 produced and not redacted;

3 F. Trade Secrets; and

4 G. Any other type or category of information which a Producing Party  
5 believes must be held in the highest level of confidence because it  
6 could otherwise create a competitive disadvantage.

7 2.9 House Counsel: attorneys who are employees of a Party to this Action.  
8 House Counsel does not include Outside Counsel of Record or any other outside  
9 counsel.

10 2.10 Non-Party: any natural person, partnership, corporation, association, or  
11 other legal entity not named as a Party to this Action.

12 2.11 Outside Counsel of Record: attorneys who are not employees of a  
13 party to this Action but are retained to represent or advise a party to this Action and  
14 have appeared in this Action on behalf of that party or are affiliated with a law firm  
15 which has appeared on behalf of that party, including support staff.

16 2.12 Party: any party to this Action, including all of its officers, directors,  
17 employees, consultants, retained experts, and Outside Counsel of Record (and their  
18 support staffs).

19 2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
20 Discovery Material in this Action.

21 2.14 Professional Vendors: persons or entities that provide litigation  
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
24 and their employees and subcontractors.

25 2.15 Protected Material: any Disclosure or Discovery Material that is  
26 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY.”  
28

1           2.16 Receiving Party: a Party that receives Disclosure or Discovery  
2 Material from a Producing Party.

### 3       **3. SCOPE**

4           The protections conferred by this Stipulation and Order cover not only  
5 Protected Material (as defined above), but also (1) any information copied or  
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
7 compilations of Protected Material; and (3) any testimony, conversations, or  
8 presentations by Parties or their Counsel that might reveal Protected Material.

9           Any use of Protected Material at trial shall be governed by the orders of the  
10 trial judge. This Order does not govern the use of Protected Material at trial.

### 11       **4. DURATION**

12           Even after final disposition of this litigation, the confidentiality obligations  
13 imposed by this Order shall remain in effect until a Designating Party agrees  
14 otherwise in writing or a court order otherwise directs. Final disposition shall be  
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
16 or without prejudice; and (2) final judgment herein after the completion and  
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
18 including the time limits for filing any motions or applications for extension of time  
19 pursuant to applicable law.

### 20       **5. DESIGNATING PROTECTED MATERIAL**

#### 21           5.1 Exercise of Restraint and Care in Designating Material for Protection.

22           Each Party or Non-Party that designates information or items for protection  
23 under this Order must take care to limit any such designation to specific material  
24 that qualifies under the appropriate standards. The Designating Party must  
25 designate for protection only those parts of material, documents, items, or oral or  
26 written communications that qualify, so that other portions of the material,  
27 documents, items, or communications for which protection is not warranted are not  
28 swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber the case development process or to  
4 impose unnecessary expenses and burdens on other parties) may expose the  
5 Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it  
7 designated for protection do not qualify for protection, that Designating Party must  
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in  
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
12 under this Order must be clearly so designated before the material is disclosed or  
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents,  
16 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
17 the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY  
18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains  
19 Protected Material.

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
21 that the Designating Party identify all protected testimony on the record, before the  
22 close of the deposition, hearing, or other proceeding, and specify the level of  
23 protection being asserted. When it is impractical to identify separately each portion  
24 of testimony that is entitled to protection and it appears that substantial portions of  
25 the testimony may qualify for protection, the Designating Party may invoke on the  
26 record (before the deposition, hearing, or other proceeding is concluded) a right to  
27 have up to 30 days from the time the final certified transcript is available to identify  
28 the specific portions of the testimony as to which protection is sought and to specify

1 the level of protection being asserted. Only those portions of the testimony that are  
2 appropriately designated for protection within the 30 days shall be covered by the  
3 provisions of this Protective Order. Alternatively, a Designating Party may specify,  
4 at the deposition or up to 30 days afterward if that period is properly invoked, that  
5 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 In the event that the deposition is videotaped, the original and all copies of  
8 the videotape shall be marked by the video technician pursuant to the terms of this  
9 Protective Order to indicate that the contents of the videotape are subject to this  
10 Protective Order, substantially along the lines of “This videotape contains  
11 confidential testimony used in this Action and is not to be viewed or the contents  
12 thereof to be displayed or revealed except pursuant to the terms of the operative  
13 Order in this Action or pursuant to written stipulation of the Parties.”

14 A Party shall give the other Parties notice if it reasonably expects a  
15 deposition, hearing, or other proceeding to include Protected Material, so that the  
16 other Parties can ensure that only authorized individuals including those who have  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present  
18 at those proceedings. Counsel for the Producing Party shall have the right to  
19 exclude from oral depositions any person—other than the deponent, the deponent’s  
20 counsel, the reporter and the videographer (if any)—who is not authorized by this  
21 Protective Order to receive or access Protected Material based on the designation of  
22 such Protected Material. Such right of exclusion shall be applicable only during  
23 periods of examination or testimony regarding such Protected Material. The use of  
24 a document as an exhibit at a deposition shall not in any way affect its designation  
25 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
26 ONLY.”

27 Transcripts containing Protected Material shall have an obvious legend on  
28 the title page stating that the transcript contains Protected Material, and the title



1 page shall be followed by a list of all pages (including line numbers as appropriate)  
 2 that have been designated as Protected Material and the level of protection being  
 3 asserted by the Designating Party. The Designating Party shall inform the court  
 4 reporter of these requirements. Any transcript that is prepared before the expiration  
 5 of the 30-day period for designation shall be treated during that period as if it had  
 6 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in  
 7 its entirety unless otherwise agreed. After the expiration of that period, the  
 8 transcript shall be treated only as actually designated.

9 (c) for information produced in some form other than documentary and for  
 10 any other tangible items, that the Producing Party affix in a prominent place on the  
 11 exterior of the container or containers in which the information or item is stored the  
 12 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 13 EYES ONLY.” If only a portion or portions of the information or item warrant  
 14 protection, the Producing Party, to the extent practicable, shall identify the  
 15 protected portion(s) and specify the level of protection being asserted.

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 17 failure to designate qualified information or items does not, standing alone, waive  
 18 the Designating Party’s right to secure protection under this Order for such  
 19 material. Upon timely correction of a designation, the Receiving Party must make  
 20 reasonable efforts to assure that the material is treated in accordance with the  
 21 provisions of this Order. Any Party that inadvertently or unintentionally produces  
 22 Protected Material without designating it as such may request destruction of that  
 23 Protected Material by notifying the recipient(s), as soon as possible after the  
 24 Producing Party becomes aware of the inadvertent or unintentional disclosure, and  
 25 providing replacement Protected Material that is properly designated. The  
 26 recipient(s) shall then destroy all copies of the inadvertently or unintentionally  
 27 produced Protected Material and any documents, information, or material derived  
 28 from or based thereon. Upon correction of a designation, the Receiving Party must

1 make reasonable efforts to assure that the material is treated in accordance with the  
2 provisions of this Order.

3 5.4 Changes to Designations. A Party may upward designate (i.e., change  
4 any documents without a designation to a designation of “CONFIDENTIAL” or  
5 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) any Disclosure or  
6 Discovery Material produced by any other Party or Non-Party, provided that said  
7 Disclosure or Discovery Material contains the upward Designating Party’s own  
8 Protected Material. Upward designation shall be accomplished by providing written  
9 notice to all parties identifying (by Bates number or other individually identifiable  
10 information) the Disclosure or Discovery Information to be re-designated. Any  
11 Party may object to the upward designation of Disclosure or Discovery Material  
12 pursuant to the procedures set forth herein regarding challenging designations.

## 13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
15 designation of confidentiality at any time that is consistent with the Court’s  
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
18 resolution process under Civil Local Rule 37-1 et seq. To avoid ambiguity as to  
19 whether a challenge has been made, the written notice provided pursuant to Local  
20 Rule 37-1 must recite that the challenge to confidentiality is being made in  
21 accordance with this specific paragraph of the Order.

22 6.3 The burden of persuasion in any such challenge proceeding shall be  
23 on the Designating Party. Frivolous challenges, and those made for an improper  
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
25 parties), may expose the Challenging Party to sanctions. Unless the Designating  
26 Party has waived or withdrawn the confidentiality designation, all parties shall  
27 continue to afford the material in question the level of protection to which it  
28

1 is entitled under the Producing Party's designation until the Court rules on the  
2 challenge.

### 3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that  
5 is disclosed or produced by another Party or by a Non-Party in connection with  
6 this Action only for prosecuting, defending, or attempting to settle this Action.  
7 Such Protected Material may be disclosed only to the categories of persons and  
8 under the conditions described in this Order. When the Action has been  
9 terminated, a Receiving Party must comply with the provisions of Section 13 below  
10 (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a  
12 location and in a secure manner that ensures that access is limited to the persons  
13 authorized under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
15 otherwise ordered by the court or permitted in writing by the Designating Party, a  
16 Receiving Party may disclose any information or item designated  
17 "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this Action, as well  
19 as employees of said Outside Counsel of Record to whom disclosure is reasonably  
20 necessary for this litigation;

21 (b) the officers, directors, and employees (including House Counsel) of the  
22 Receiving Party to whom disclosure is reasonably necessary for this Action;

23 (c) Experts (as defined in this Order) of the Receiving Party (1) to whom  
24 disclosure is reasonably necessary for this litigation, (2) who have signed the  
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom  
26 the procedures set forth in paragraph 7.4, below, have been followed;

27 (d) the court and its personnel;  
28

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, interpreters or translators, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action for the Designating Party, the Producing Party and any party with knowledge about the document;

(g) the author or recipients appearing on the face of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(h) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;<sup>1</sup>

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, interpreters or translators, and Professional Vendors to whom disclosure is

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<sup>1</sup> This Order contemplates that the officers, directors, and employees (including House Counsel) of a Receiving Party shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 reasonably necessary for this litigation and who have signed the “Acknowledgment  
2 and Agreement to Be Bound” (Exhibit A);

3 (e) during their depositions, witnesses in the Action for the Designating Party  
4 or the Producing Party (not the Receiving Party), including former employees  
5 whom Receiving Party has a good faith belief had access to the information during  
6 their employment with the Designating Party or the Producing Party;

7 (f) the author or recipients appearing on the face of a document containing  
8 the information or a custodian or other person who otherwise possessed or knew the  
9 information; and

10 (g) any mediator who is assigned to hear this matter, and his or her staff.

11 7.4 Procedures for Approving or Objecting to Disclosure of  
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY” Information or Items to Experts.

14 (a) Unless otherwise ordered by the Court or agreed to in writing by the  
15 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
16 Order) any information or item that has been designated “CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
18 paragraph 7.2 or 7.3 first must make a written request to the Designating Party that  
19 (1) sets forth the full name of the Expert and the city and state of his or her primary  
20 residence, (2) attaches a copy of the Expert’s current resume and the  
21 “Acknowledgment and Agreement to be Bound,” and (5) identifies any litigation in  
22 connection with which the Expert has offered expert testimony, including through a  
23 declaration, report, or testimony at a deposition or trial, during the preceding five  
24 years.

25 (b) A Party that makes a request and provides the information specified in the  
26 preceding respective paragraphs may disclose the subject Protected Material to the  
27 identified Expert unless, within 7 days of delivering the request, the Party receives a  
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1 written objection from the Designating Party. Any such objection must set forth in  
2 detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer  
4 with the Designating Party (through direct voice to voice dialogue) to try to resolve  
5 the matter by agreement within seven days of the written objection. If no agreement  
6 is reached, the Party seeking to prevent disclosure of its materials to the Expert may  
7 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local  
8 Rule 79-5, if applicable) seeking a protective order from the court. Any such  
9 motion must describe the circumstances with specificity, set forth in detail the  
10 reasons why a protective order is reasonably necessary, assess the risk of harm that  
11 the disclosure would entail versus a Party's right to use an expert of its choice, and  
12 suggest any additional means that could be used to reduce that risk. In addition, any  
13 such motion must be accompanied by a competent declaration describing the  
14 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of  
15 the meet-and-confer discussions).

16 In any such proceeding, the Party opposing disclosure to the Expert shall  
17 bear the burden of proving that the risk of harm that the disclosure would entail  
18 (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
19 the Protected Material to its Expert.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
21 **PRODUCED IN OTHER LITIGATION**

22 If a Party is served with a subpoena or a court order issued in other litigation  
23 that compels disclosure of any information or items designated in this Action as  
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
25 ONLY," that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall  
27 include a copy of the subpoena or court order;  
28

(b) promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.<sup>2</sup>

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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<sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.



(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

#### **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)



request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

Inadvertent or unintentional production of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” documents or information without such designations shall not be deemed a waiver in whole or in part of a claim for treatment as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If, through inadvertence, a Producing Party provides any information pursuant to this litigation without marking the information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” the Producing Party may subsequently inform the Receiving Party of the specific designation of the disclosed information, and the Receiving Party shall treat the disclosed information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information upon receipt of written notice from the Producing Party. To the extent the Receiving Party has already disclosed such information, the Receiving Party shall use its best efforts to promptly collect any copies of disclosed material that have been provided to individuals other than those authorized under this Protective Order, and if collected, shall destroy them or return them to the Producing Party.

If a Producing Party inadvertently produces a document, tangible item or electronically stored information that it later discovers or in good faith asserts to be privileged, protected by the work-product doctrine, or subject to some other immunity from disclosure (“Privileged Material”) the production of that Privileged Material shall not be deemed to constitute a waiver of any applicable privileges, work product protection, or immunity from disclosure. In such circumstances, upon discovery of the inadvertent disclosure, the Producing Party shall notify the Receiving Party of the inadvertent production within five (5) business days of

determining that Privileged Materials were inadvertently produced, and request either the return or confirmation of destruction of the Privileged Materials. Within five (5) business days of receiving such notification, the Receiving Party shall return or confirm destruction of all such materials. Such return or confirmation of destruction shall not preclude the Receiving Party from seeking to compel production of the materials (based on information independent of the content of the returned, allegedly privileged materials in question) and shall not constitute an admission by the Receiving Party that the materials were, in fact, privileged or otherwise protected in any way.

## **12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

## **13. FINAL DISPOSITION**

After the final disposition of this Action, as defined in Section 4 (DURATION), within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all

1 copies, abstracts, compilations, summaries, and any other format reproducing or  
2 capturing any of the Protected Material. Whether the Protected Material is returned  
3 or destroyed, the Receiving Party must submit a written certification to the  
4 Producing Party (and, if not the same person or entity, to the Designating Party) by  
5 the 60-day deadline that (1) identifies (by category, where appropriate) all the  
6 Protected Material that was returned or destroyed; and (2) affirms that the  
7 Receiving Party has not retained any copies, abstracts, compilations, summaries, or  
8 any other format reproducing or capturing any of the Protected Material.  
9 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
10 pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
11 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
12 work product, and consultant and expert work product, even if such materials  
13 contain Protected Material. Any such archival copies that contain or constitute  
14 Protected Material remain subject to this Protective Order as set forth in Section 4  
15 (DURATION).

16 **14.** Any violation of this Order may be punished by any and all appropriate  
17 measures including, without limitation, contempt proceedings and/or monetary  
18 sanctions.

19  
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21  
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23  
24 Dated: January 30, 2024



25 Honorable Steve Kim  
26 United States Magistrate Judge

1 Dated: January 26, 2024

2 By: /s/ Brianna Patterson  
3 Brianna Patterson

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23 *Attorneys for Plaintiff / Counterclaim*  
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25 Dated: January 26, 2024

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*Attorneys for Defendant and*  
*Counterclaim Plaintiff KinderFarms,*  
*LLC*

**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from counsel for KinderFarms LLC.

Dated: January 26, 2024

By: /s/Brianna Patterson  
Brianna Patterson

*Attorneys for Plaintiff and Counterclaim  
Defendant Genexa, Inc.*

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its  
entirety and understand the Protective Order that was issued by the United States  
District Court for the Central District of California on \_\_\_\_\_ [date] in  
*Genexa, Inc. v. KinderFarms, LLC.*, Case No. 2:23-cv-08378-MCS(SKx) (C.D.  
Cal). I agree to comply with and to be bound by all the terms of this Protective  
Order, and I understand and acknowledge that failure to so comply could expose  
me to sanctions and punishment in the nature of contempt. I solemnly promise that  
I will not disclose in any manner any information or item that is subject to this  
Protective Order to any person or entity except in strict compliance with the  
provisions of this Protective Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing the terms of this  
Protective Order, even if such enforcement proceedings occur after termination of  
this Action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]